IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

CRL.A.No. 821 of 2004()

SC.307/2001 of ADDL. SESSIONS JUDGE, FAST TRACK COURT NO.I, PALAKKAD
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APPELLANT: ACCUSED 1 TO 3
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1. MUHAMMADALI @ NANIPPA, S/O. MAMMU,
AGED 28 YEARS, PUTHANKALATHIL HOUSE,
VATTAMANNAPURAM, EDATHANATTUKARA

2. KUTTAN @ JAYAKRISHNAN, S/O. RAMAKRISHNAN
AGED 26 YEARS, OTTUPURATH HOUSE, CHERATTAKULAM,
EDATHANATTUKARA.

3. FAISAL S/O. ABDULLA @ CHUNNI,
AGED 22 YEARS, CHELAKKODAN HOUSE,
VATTAMANNAPURAM, EDATHANATTUKARA.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.M.P.PRABHANANDAN

RESPONDENT: COMPLAINANT

STATE OF KERALA- REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/04/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

Crl.A.No.821 OF 2004

Dated 2nd April, 2007

JUDGMENT

Koshy,J.

Appellants were charge sheeted for committing murder of one Abdul Salam. They were convicted for the offences punishable under sections 302 and 323 read with section 34 of the Indian Penal Code. Prosecution case is that accused (three in number) are residents of Edathanattukara. First accused owed some money to the deceased. On 19.12.1998 evening, the accused persons and the deceased met in the toddy shop at Kottappalam in Edathanattukara. In the toddy shop and in the road in front of the toddy shop, the accused persons in furtherance of their common intention of doing away with Abdul Salam beat, fisted and kicked him and as a result of the attack the victim fell down at about 8 p.m. in the night. Subsequently, all the accused persons together forcibly taken the victim in KL-9E-5270 autorickshaw driven by PW8 to Vattamannapuram Panchayath ground. On the next day morning the dead body of the victim was found near the panchayath ground and PW1 informed the matter before the police. PW20 Sub Inspector registered the crime against A1 and A2. Subsequently, report was filed implicating the third accused

also. Main investigation was conducted by PW17 Circle Inspector. PW21 doctor conducted postmortem examination and issued Ext.P20 certificate. In Ext.P20 certificate following ante-mortem injuries were mentioned:

> "1. Abrasion 2 x .9 cm on the inner aspect of right ankle joint.
>
> 2. Multiple abrasions over an area of 4 x 2cm on the front of right knee.
>
> 3. Abrasion 2.7 x 1 cm on the front of left knee.
>
> 4. Multiple abrasions over an area of 5.3 x 3.4 cm on the outer and back aspect of left elbow.
>
> 5. Contused abrasion multiple over an area of 6.4 x 4 cm on the back of left wrist joint and just above the wrist.
>
> 6. Multiple contused abrasions over an area of 17 x 4 cm on the back of right side of trunk over the shoulder and shoulder blade.
>
> 7. Contused abrasion 5 x 3.5 cm on the back left side of trunk over the inner border of shoulder blade.
>
> 8. Lacerated bone deep wound 1.7 x 1 cm on the back of left side of head 4 cm inner to the ear and 9.5 cm above the root of neck. The scalp hairs around the wound were crushed. The scalp tissues underneath were bruised. The brain showed thick subdural and subarachanoid haemorrhages with a handful of blood clots at the base of brain.

9. Laceration muscle deep 17 x .8 cm on the right side of head 5.5 cm above the top of ear and 12.5 cm behind the outer end of eyebrow. The lamboid suture on the right side was separated for a length of 2cm.

10. Contused abrasion 2 x 1.5 cm on the left side of forehead 1.3 cm above the middle of eyebrow.

11. Contusion 6 x 2.8 cm on the left side of face 1 cm below the eye. The eye was congested.

12. Contusion 6.5x 4 cm around the right eye with diffuse swelling around.

13. Contused abrasion multiple over an area of 3.5 x 2.5 cm on the right side of neck 6.2 cm below the ear. The strap muscles of neck showed infiltration of blood at multiple areas. The soft tissues around the hyoid bone was bruised but hyoid was intact.

14. Abrasion 1 x .3cm on the middle of right collar bone.

15. Abrasion 1.2 x 1 cm on the left side of inner aspect of lower lip. The teeth were intact.

16. Contused abrasion multiple over an area of 3 x 1.2 cm of the inner aspect of middle of upper lip with diffuse swelling around.

17. Abrasion superficial 4 x 3 cm over the left ear pinna."

According to the doctor, death was due to combined effect of head injury and neck violence. Exact time of death was

not stated. It is stated that the victim might have died more than 12 hours before 11.45 a.m. on 21.12.1998. The doctor also deposed that he cannot exclude the possibility of sustaining such injuries by accident or fall. Abrasions and lacerations could be caused by coming into contact with a hard and rough object.

2. PW1, brother of the deceased, who gave the F.I. Statement, admittedly, has not seen the incident. He only stated that PW3 informed him about seeing his brother's dead body. From PW3 he understood that A1 and A2 have inflicted the injuries in the premises of the toddy shop and thereafter taken in an autorickshaw and they might have killed him. He understood that there were some money disputes between A1 and the deceased. Since he is not an eye witness and he has got only hearsay information, his evidence is not much helpful to the prosecution and therefore, delay in giving F.I. Statement etc. are of not much consequences. PW3 categorically stated that he has not informed about names of the accused etc. to PW1 and he was declared hostile. If evidence of PW3 is believed, PW1 got information from somewhere else and not from PW3. PW2 is only an inquest witness. PW4 stated that when he went to purchase some medicines, he went near the toddy shop and

heard some sounds. On looking he found that there was a scuffle between the deceased and accused persons and accused pushed the deceased and he fell down. Thereafter, the accused persons left the place. PW4 was declared hostile as he denied his 161 statement that he saw accused forcefully taking the deceased in an autorickshaw, but, during cross examination by the prosecution he stated that he saw the deceased travelling in an autorickshaw, but, he did not identify the accused as the persons in the autorickshaw. He only stated that he saw the scuffle between the accused and the deceased. But, he was very definite that after that scuffle the accused went away. Therefore, his evidence at the maximum show a motive. But, last seen theory cannot be stated as according to him, after the scuffle, the accused went away and he has not seen the accused thereafter. PWs 5 and 7 are salesmen in the toddy shop and PW6 is the owner of the toddy shop. All of them stated that they have not seen the incident and they were declared hostile. During cross examination also nothing came out from their evidence.

3. PW8 is the driver of an autorickshaw, in which, according to the prosecution, the injured was carried by the accused. But, before the court, in chief examination,

PW8 deposed that he has no acquaintance with the accused or the deceased. A2 has not called or used his autorickshaw. He deposed as follows:

He also stated that his father owned KL-9E-5270 autorickshaw and during 1998 he was driving the autorickshaw. He further stated in chief examination that he has not carried anybody to Vattamannapuram ground from the vicinity of the toddy shop. A specific question was asked whether A1 and A3 have taken a person in his autorickshaw or not. That was also denied. He deposed as follows:

He was declared hostile. Thereafter, some questions were asked to him and finally he told that he has stated so before the police. According to the counsel for the appellants, extracts of the 161 statement from here and there were put to him and in cross examination by

Public Prosecutor he stated that he has stated so to the police. He also deposed that the third accused travelled in his autorickshaw and after two days he knew that Abdul Salam died and he carried Abdul Salam. He then identified the accused and he had acquaintance with the deceased. But, in cross examination for defence he stated that earlier he was working in Gulf, that he was under the medical treatment for mental illness for two years and that he has no memory power. He also stated that police gave him statement regarding the incident and he repeated it. He deposed as follows:

He further deposed that when summons was served, police constable reiterated the same and he only stated so. He further stated that accused and deceased never travelled in his autorickshaw. In re-examination by public prosecutor, he stated that he is taking medicines as prescribed by doctor. Absolutely there is no other evidence against the accused. No weapons were recovered. There is no Section 27 recovery of the alleged weapon. It is tried to prove by the prosecution that the dress worn by A2 contained blood

which is of group `O' as was the blood group of the deceased. But, trial court did not believe it as the materials were given to the court only after one year and dress was not recovered through a disclosure statement of A2. There is no evidence to show that the dress recovered was actually that of A2. Therefore, on going through the evidence, the only evidence relied on is the evidence given by PW8. We are of the opinion that on that evidence alone it cannot conclusively prove that the accused are guilty. Chief examination of PW8 clearly shows that he has no knowledge of the incident. Even though the police statement was admitted by him, those statements were not marked. But, in cross examination by the defence it has been stated that he was a mental patient and he was under treatment. He was not further cross examined by the prosecution on those aspects. In any event, nobody has seen killing the deceased and evidence of PW8, who is a hostile witness, cannot be taken as the sole link for establishing that A1, A2 and A3 together inflicted injuries leading to death of Abdul Salam. In any event, they are entitled to the benefit of reasonable doubt.

3. In the above circumstances, we are of the view that prosecution was not able to prove the case against the

accused beyond reasonable doubt. In the result, appellants (A1 to A3) are acquitted. They should be set free forthwith if they are not required in any other case.

The appeal is allowed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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